

**GERALDINE P. GREENER**  
Claimant

**MC FABRICATION INC.**  
Respondent

**FREMONT COMPENSATION INSURANCE GROUP  
and AMERICAN COMPENSATION INSURANCE  
COMPANY**

Insurance Carriers

## ORDER

## ISSUES

Respondent and Fremont argue that this appeal fails to raise an issue which the Board has jurisdiction to review on an appeal from a preliminary hearing order and should, therefore, be dismissed. In the alternative, should the Board reach the merits of the issue

as to claimant's date of accident, respondent and Fremont ask that the ALJ's Order be affirmed.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Board concludes that the issues raised on appeal are not jurisdictional issues. As a consequence, the Board does not have jurisdiction to review those issues at this stage of the proceedings.

On an appeal from a preliminary hearing order, the Board is limited to review of allegations that the ALJ exceeded his/her jurisdiction. K.S.A. 44-551. This includes review of issues identified in K.S.A. 44-534a as jurisdictional issues. On the current appeal, there is no dispute that claimant's current need for medical treatment is the result of an injury that arose out of and in the course of her employment with respondent. The only question is the date or dates of accident and, as a result, which insurance carrier is liable for benefits. RTW contends the ALJ erred by assessing liability for medical treatment against RTW "as the date of accident herein cannot, at this point, under the law, be determined." This contention does not raise one of the issues identified in K.S.A. 44-534a. Furthermore, assessing liability for medical treatment against one of two insurance carriers on the risk during the period of alleged injury does not exceed the ALJ's jurisdiction. See Carpenter v. National Filter Service, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

The ALJ has jurisdiction over the respondent and, therefore, over its insurance carriers. See K.S.A. 40-2212; Landes v. Smith, 189 Kan. 229, 368 P.2d 302 (1962). Furthermore, K.S.A. 44-534a grants an ALJ the authority to award medical and temporary total disability compensation at a preliminary hearing after "a preliminary finding that the injury to the employee is compensable."

The Board was presented with a similar issue in the case of Ireland v. Ireland Court Reporting, WCAB Docket Nos. 176,444 & 234,974 (Feb. 1999), where, in holding that the Board was without jurisdiction to consider the issue of which insurance carrier should pay for the preliminary hearing benefits, we said:

Furthermore, it is inconsistent with the intent of the Workers Compensation Act for a respondent to delay preliminary hearing benefits to an injured employee while its insurance carriers litigate their respective liability. The employee is not concerned with questions concerning this responsibility for payment once the respondent's general liability under the Act has been acknowledged or established. Kuhn v. Grant County, 201 Kan. 163, 439 P.2d 155 (1968); Hobelman v. Krebs Construction Co., 188 Kan. 825, 366 P.2d 270 (1961).

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the appeal of the preliminary hearing Order entered by Administrative Law Judge Steven J. Howard on September 19, 2001, should be, and the same is hereby, dismissed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 2001.

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BOARD MEMBER

c: Geraldine P. Greener, 9701 Hardesty, Kansas City, MO 64137, pro se claimant  
Gary R. Terrill, Attorney for Respondent and Fremont  
Steven J. Quinn, Attorney for Respondent and RTW  
Steven J. Howard, Administrative Law Judge  
Philip S. Harness, Director